

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLN. NO. 10/540,031

**REMARKS**

Applicant amends the specification to insert the headings suggested by the PTO Guidelines.

Applicant cancels claims 1, 6 and 9, and amends claim 3 to make it dependent upon the allowable claim 2, thereby rendering **moot** the rejection under 35 U.S.C. § 102(b) based on anticipation by Focke '538 (assigned to the Assignee of the present application).

Applicant rewrites the **allowable** claims 2 (2/1), 4 (4/3/1), 7 (7/3/1), 8 (8/6/1) and 10 (10/3/1) in independent form, and amends claim 5 (5/2), whereby Applicant respectfully requests the Examiner now to **allow claims 2, 4, 5, 7, 8 and 10.**

Applicant adds new claims 11-19. New claim 11 is essentially a combination of the previous claims 1 and 6 in conjunction with further clarifying features taken from the specification. Claims 12 to 15 correspond to the original claims 2 to 5, but with editorial changes in the wording. The same applies to claims 16 to 19, which are based on the previous claims 7 to 10.

The claimed invention is directed to an apparatus working in combination with a packaging machine for cigarettes. The packaging machine is conventionally equipped with a "cigarette magazine" which, with the help of "shafts", keeps the cigarettes ready for packaging in upright rows of individual cigarettes. By using push rods, which are inserted into each shaft, a cigarette group corresponding to the contents of a cigarette pack is pushed out of the shaft and transferred to a cigarette conveyor with pockets for one group of cigarettes each.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLN. NO. 10/540,031

It is already known that, when the cigarette group is ejected from the magazine and/or when transferred to the cigarette conveyor, it is possible to influence and determine the formation of the cigarettes within the cigarette group. The claimed invention also relates to this subject matter.

The object of the claimed invention is to generate a special formation of cigarettes for the cigarette group, namely corresponding to the arrangement pursuant to Applicant's Fig. 7. Accordingly, the cigarette group consists of rows of cigarettes that are directed upright or transverse (to the front and rear side of the pack) and in which adjacent rows exhibit a different number of cigarettes. The outer rows 23 have a smaller number of cigarettes, e.g., two cigarettes or three cigarettes. The adjacent rows 22 consist of three cigarettes or four cigarettes; in any case one cigarette more than the adjacent marginal row 23.

Another special feature is that the cigarettes of adjacent transverse rows lie offset to one another, namely in what is known as a "saddle position".

It is known that the cigarettes of a cigarette group are shifted in a transverse direction to one another when being pushed out of the cigarette magazine or transferred to the pockets of the cigarette conveyor. This transverse displacement is necessary because the cigarettes in the shafts of the cigarette magazine lie at a (transverse) distance to one another. This is due to the walls of the shafts, on the one hand, and to the necessary play of the cigarettes within the shaft, on the other. The distances of the shaft walls to each other are greater than the diameter of the cigarettes. The resulting gaps are eliminated by the transverse shifting of the entire group, with

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLN. NO. 10/540,031

the result that the cigarettes of a cigarette group lie tightly against one another when the cigarette group is introduced into the cigarette conveyor.

During the claimed invention's formation of the cigarettes, in which cigarette rows are oriented in a transverse or vertical direction (Fig. 7), a considerable degree of transverse movement is necessary. For one, the gaps between the cigarettes in the shafts must be overcome. For another, however, the transverse movement must also achieve the "saddle position" of the cigarettes. For this reason, according to the invention's teachings, a considerable transverse movement of at least the outer or laterally positioned cigarette rows is necessary during the transfer of a cigarette group to the cigarette conveyor. The transverse movement is made during this transfer so that, according to the invention, at least the marginal push rods 18 must execute a transverse movement with the cigarette rows that are moved by these push rods 18. This is the topic of the invention.

Furthermore, with the help of the claimed guiding ribs 25, 29, 30 in the region of the transfer stretch, the formation of cigarettes in the cigarette group is prepared pursuant to Fig. 7; namely, such that adjacent rows of cigarettes have a different number of stacked cigarettes.

Applicant respectfully **traverses** the rejection under 35 U.S.C. § 102(b), based on anticipation by Focke '538, insofar as this rejection may be applied to the new claims 11-19.

More specifically, Applicant respectfully submits that Focke '538 does not disclose, either expressly or inherently, or even suggest, all of the limitations of the new independent claim 11.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLN. NO. 10/540,031

In this regard, in Focke '538, cigarette groups are pushed out of the cigarette magazine or out of shafts of a cigarette magazine by push rods 27 (Fig. 2, Fig. 6). But it can also be seen that groups of three stacked cigarettes are formed in each case, i.e. a complete formation with (transverse) rows consisting of three cigarettes each. As seen in the illustration according to Fig. 7, this results in the cigarette group being merged in the transverse direction by lateral, converging guide surfaces of an intermediate component 45. But it can also be seen that the cigarettes are moved in a transverse direction merely to overcome the gaps determined by the magazine. In particular, Focke '538 fails to teach or suggest push rods, in particular marginal push rods, which can likewise be moved in a transverse direction.

Also of interest is GB 2 104 035 to Focke (cited in the IDS filed August 15, 2006). This reference also relates to the formation of cigarette groups when pushed out of a cigarette magazine. A shaping piece 45 arranged between the magazine and a cigarette conveyor 50 is provided with converging side walls and with ribs arranged on a top wall, bottom wall and side wall (Fig. 13 to Fig. 18). With the help of these devices and correspondingly configured push rods (Fig. 6), it is claimed that different formations of the cigarette groups are produced pursuant to Fig. 7 to Fig. 12. The object is to configure longitudinally directed (parallel to the front and rear side of the pack) cigarette rows – corresponding to the universally common formation of cigarettes in cigarette packs – such that gaps 36 are created in individual cigarette rows c. These are necessary for adapting the number of cigarettes per pack as may be required by the sales price for cigarette packs. The projections or ribs shown in Fig. 13 to Fig. 18 therefore have the task of holding a cigarette back in this region when the group is pushed out of the cigarette

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLN. NO. 10/540,031

magazine. However, GB '035 **fails** to provide a teaching or suggestion of a guiding of the cigarettes which moves them in the vertical direction, namely so that they are lifted in order to create a "saddle position" with respect to an adjacent row of cigarettes.

Therefore, Applicant respectfully submits that the new claims 11-19 neither are anticipated by, nor would have been obvious from, the prior art, whereby Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 102(b), and to find the application to be in condition for allowance with the presently pending claims 2-5, 7, 8 and 10-19; however, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Applicant files concurrently herewith an Excess Claim Fee Payment Letter (with fee) to cover the cost of the three (3) excess independent claims generated by this Amendment.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLN. NO. 10/540,031

under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

/John H. Mion/

John H. Mion  
Registration No. 18,879

SUGHRUE MION, PLLC  
2100 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037-3213  
(202) 663-7901

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: January 23, 2007